BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	**John M. Higgins** 01-076-076-030.00L-001 **David Hairrell** 01-076-076-034.00L-001 **Michael E. Callaway** 01-087-087-014.00L-001 **Tommie J. Davis** 01-087-087-015.00L-001 **Phil Newman** 01-087-087-019.00L **Phillip S. Dooly, et al** 01-087-022.00L-001 **Wayne Feehrer** 02-077-077-006.00L-001 **Kelly Feehrer** 02-077-077-007.00L-001 **William A. Pettit** 02-077-077-008.00L-001 **Maryl Elliott (Katie Torrence, et al)** 02-077-077-099.00L-001 **Robert H. Robbins** 02-077-077-017.00L-001 **Douglas P. Swayne** 02-077-077-019.00L-001 **Amy Card Lillios** 02-088-088-001.00L-001 **Max Everhart** 02-088-088-002.00L-001 **Anne Longley** 02-088-088-004.00L-001 **Tax Years 2003 – 2007**	))
		Polk County

FINAL DECISION AND ORDER

Statement of the Case

This matter involves consolidated appeals by taxpayers from the initial decision and order of the administrative judge. This hearing specifically relates to three appeals filed by taxpayer representatives on behalf of multiple taxpayers. Many of the appellants waived the right to be heard at the hearing and only sought a ruling from this Commission. In a March 2, 2005 Order on Interlocutory Review, this Commission remanded the matter to the administrative judge, who affirmed the following values for the subject properties:

Parcel ID	Land Value	Improvement Value	Total Value	Assessment
1-76-30L-001	$164,000	$38,000	$202,000	$50,500
1-76-34L-001	$164,000	$50,700	$214,700	$53,675
1-87-14L-001	$164,000	$58,900	$222,900	$55,725
1-87-15L-001	$164,000	$28,100	$192,100	$48,025
1-87-19L-001	$164,000	$39,300	$203,300	$50,825

Parcel ID	Land Value	Improvement Value	Total Value	Assessment
1-87-22L-001	$164,000	$ 47,100	$211,100	$52,775
2-77-6L-001	$180,000	$ 79,100	$259,100	$64,775
2-77-7L-001	$180,000	$ 69,100	$249,100	$62,275
2-77-8L-001	$180,000	$ 39,000	$219,000	$54,750
2-77-9L-001	$180,000	$ 58,600	$238,600	$59,650
2-77-17L-001	$ 80,000	$ 45,700	$125,700	$31,425
2-77-19L-001	$ 80,000	$ 17,300	$ 97,300	$24,325
2-88-1L-001	$164,000	$ 77,200	$241,200	$60,300
2-88-2L-001	$164,000	$103,000	$267,000	$66,750
2-88-4L-001	$164,000	$ 43,600	$207,600	$51,900

The appeal was heard in Athens, Tennessee on December 13, 2007 before Commission members Ogden Stokes (presiding), Beth Ledbetter, Robert Walker, and Kay Sandifer.[1] The appellants were represented by Attorney David Elliott and Robert Robbins, Esq. Appellant representative, Attorney Michael Calloway, was unable to attend the hearing. The county was represented by Randy Yates, the Polk County Assessor of Property. General Counsel Robert T. Lee, who appeared on behalf of the Division of Property Assessments (DPA), assisted Mr. Yates.

Findings of Fact and Conclusions of Law

The subject properties are located in the Parksville Lake area of the Cherokee National Forest in Polk County. Appellant testimony indicated that the structures located on the subject properties are "recreational summer cabins" and that the subject properties are prohibited from being used as permanent residences. The properties are owned by the U.S. Department of Agriculture and managed by the Forest Service, which has issued permits to the appellants. In the March 2, 2005 Order on Interlocutory Review, this Commission determined that "the rights conferred by the permit are comparable to a lease rather than a license" and these rights rise to the level of an assessable interest in the real property.

In the first of two preliminary matters, Mr. Lee noted that no appeals had been filed subsequent to tax year 2005. Mr. Lee stated that the county would likely not object to a motion to amend the appeals to include tax years 2006 and 2007. Attorney Elliott stated that he wanted to file a motion to include those subsequent tax years. Therefore, this Commission voted to include tax years 2006 and 2007 in this decision.

The second preliminary matter involved the categorization of the permits as leases. Attorney Elliott submitted information concerning the issue of whether the rights

[1]Mr. Walker sat as a designated alternate in the absence of a regular member, per T.C.A. § 4-5-302(e).

conferred by the permits were comparable to a leasehold or a license. To support the contention that the permits were licenses and did not convey an assessable interest in the subject properties, the appellants cited the criteria discussed in Conti v. U.S., 291 F.3d 1334 (2002), regarding the factors used to determine whether a property interest exists regarding a permit. Those factors are as follows: (1) whether the permit can be assigned, sold, or transferred; (2) whether the permit confers exclusive rights; and (3) whether the permit can be revoked, suspended, or modified by the government. After due consideration, this Commission decided that this issue had already been properly brought before this body; had been duly deliberated; and that there was no need to revisit the issue. Therefore, our decision in the 2005 Order on Interlocutory Review would stand.

In light of the resolution of these preliminary matters and the fact that Administrative Judge Loesch had denied the reconsideration request made by the appellants, the only remaining issue properly before this Commission concerned valuation. The cabins located on the subject properties are structures and have been separately assessed. No appeals have been filed regarding the assessments of the improvements.

Traditionally, pursuant to T.C.A. § 67-5-605, the valuation of assessable leasehold interests would be done by "discounting to present value the excess, if any, of fair market rent over actual and imputed rent for the leased premises, for the projected term of the lease, including renewal options". Under this statutory provision, the valuation of options to purchase is deemed "speculative" in nature. Therefore, "any option that the lessee may be given to purchase the leased premises shall be deemed to have no value".

In this case, the Division of Property Assessments (hereinafter referred to as "DPA") calculated the values of the leasehold interests. Based upon a stated lack of comparable rentals of residential properties, DPA used the sales data of comparable cabins to determine the fair market value of the leaseholds of the subject properties.

The methodology used by DPA was discussed at length in the Initial Decision and Order of the administrative judge. As stated, DPA deemed the value of the right to use and occupy a subject lot to be the remainder of subtracting the value assigned to the existing improvements from each sales price. The fair market rent was calculated by using the "IRV" (Income = Rate x Value) method, using a capitalization rate of 0.10. The leasehold value was then determined by discounting the excess of market rent over contract rent "plus a "miscellaneous' expense allowance".

Although the permits issued to the appellants by the Forest Service are for a 20-year period ending December 31, 2008, DPA chose to use a 99-year projected permit term in its calculations. The rationale was that it was a "probability" that new purchasers of the subject properties would be issued new permits, thereby involving

very little risk on the part of the purchasers. Appellants argue that the methodology used was "unconscionable" and did not follow the applicable statute. Appellants contend that this methodology was based on the fact that some cabin owners would sell their cabins, which amounted to the county using a "sales-of-improvement" rate to determine fair market rent. The appellants also contend that, contrary to the "probability" notion put forth by the county, it is actually a "possibility" that new permits will be issued to new purchasers of the subject properties. Therefore, new purchasers would be assuming a risk and the sales of the subject properties would be "speculative", the use of which would be prohibited by statute for appraisal purposes.

On behalf of the county, attorney Lee stated that calculations were done that used a 25-year projected term, but that there was very little difference in the outcome. Since the first tax year in question is 2003, the 25-year term was determined by taking the 5 years remaining on the term of the permit, i.e., the original permit term expires in 2008, and adding another full term of 20 years. Attorney Lee also stated that the "IRV" (Income/Rate/Value) method was used to "back into" the rent. According to attorney Lee, using the 25-year term made a difference of less than 5%.

It is the position of the appellants that the county ignored two other ways to determine fair market value. The first method ignored by the county was to simply use the fair market value as determined by the federal government. According to attorney Elliot, 36 C.F.R. § 251.57 requires that the federal government must charge a "fair market value". The appellants contend that, since they were paying fair market value, the value of the leasehold interest would be zero.

The appellants argue that the second method ignored by the county was to compare the rental rates for cabins that are located on the nearby marina. Appellants contend that this would have been more appropriate than comparing the sales of cabins. Appellants argue that, by using the sales of cabins, other factors were being included in the equation, e.g., the improvements.

However, the county counters that it would not have been appropriate to use the leased cabins in the calculations. Based on the fact that these cabins were being leased by the day and the weekend, the county views these cabins as being a very different type property from the subject properties. Regarding the inclusion of other factors in the equation, attorney Lee pointed out that the assessed value of the permit has already been reduced by the value of the improvement.

It is true that the federal government has the right to deny the issuance of a new permit or the renewal of an existing permit. The evidence indicated that, in that case, the property owner would have to remove the improvements on the subject property. However, as pointed out by attorney Lee, the property owner could have up to 10 years to remove the improvements. Although the appellants argue that it is a "possibility" that permits will be issued to new purchasers, we agree with the county that it is more a

"probability" that permits will be issued. There was no evidence to suggest that permits were ever denied to new purchasers. This supports the conclusion that, contrary to the contentions of the appellants, the sales used by the county in its calculations are not "speculative" in nature, as the new purchasers seem to be incurring very little, if any, risk. We, therefore, reject that argument.

Admittedly, we did have concerns regarding the use of the 99-year term in the methodology used by the county. However, those concerns were assuaged by the fact that the use of a 25-year projected term made very little difference in the outcome.

The proposal by the appellants to use the rented cabins around the marina as comparables also caused concern. As pointed out by attorney Lee, the nature of the daily and weekend rental arrangement of those cabins makes them a different type property from the subject properties.

We also reject the notion that the fair market valuation established by the federal government should be used. Those valuations were done in June 1998 – many years prior to the subject tax years. Although adjusted for inflation, the fair market values established by the federal government in 1998 are not relevant to current value unless it is proven the values have been recently updated using comparable sales.

As already stated, the valuation in this case is somewhat unusual. Here, there was an absence of data on comparable rental properties that are subject to the assessment of leasehold interests. The assessor addressed the problem by deriving market rent from comparable sales. After reviewing the testimony and the evidence, there is nothing in the record to support a finding that the methodology used by the county was unreasonable or that it is contrary to T.C.A. § 67-5-605.

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is modified to include tax years 2006 and 2007 and the values and assessments are affirmed as follows:

Parcel ID	Land Value	Improvement Value	Total Value	Assessment
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2-88-4L-001	$164,000	$ 43,600	$207,600	$51,900

This order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.
2. **Review by the State Board of Equalization**, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 29, 2008

Presiding Member

ATTEST:

Executive Secretary

cc: David Elliott, Attorney
Robert Robbins, Attorney
Michael Calloway, Attorney
Robert T. Lee, General Counsel, Division of Property Assessments

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